

Agenda Item # _____ :

Request to Proceed to Public Notice and Hearing with Proposed Amendments to 15A NCAC 2B .0240, the Nutrient Offset Payments Rule.

Explanation:

In April of 2005 the Water Quality Committee (WQC) authorized the Division to proceed with proposed amendments to 15A NCAC 2B .0240, the Nutrient Offset Payments Rule. These proposed amendments (attached) will update the existing nitrogen offset fee for the Neuse River Basin and will extend the offset program to the Tar-Pamlico River Basin for both nitrogen and phosphorous offsets. In addition, the amendments contain a new method for calculating the offset payments for both nitrogen and phosphorous that incorporates the land acquisition costs associated with the implementation of the nutrient mitigation best management practices. The updated nitrogen fee (cost per pound of nitrogen mitigated) was based upon the costs that are being encountered in the field in establishing the mitigation sites and the new, proposed fee was calculated to be \$57/lb of nitrogen, a significant increase from the existing \$11/lb. Using a similar methodology the phosphorous fee for the Tar-Pamlico River Basin (cost per tenth of a pound of phosphorous) was calculated to be \$45/0.1 lb of phosphorous. Due to the proposed significant increase in the nitrogen fee the WQC recommended that the Environmental Management Commission solicit input as to the costs of establishing nutrient mitigation sites so that a comparison can be made between the solicited data and the cost data used to formulate the proposed amendments.

Recommendation:

That the Environmental Management Commission approve the proposed amendments to 15A NCAC 2B .0240 for Public Notice and Hearing with the qualification that the Notice specifically solicit additional input regarding the costs associated with establishing nutrient mitigation best management practices.

1 15A NCAC 02B .0240 is proposed for amendment as follows:

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3 15A NCAC 02B .0240 ~~Neuse River Basin Nutrient Sensitive Waters Management Strategy:~~
4 Nutrient Offset Payments
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6 ~~(a) Nutrient offset payments made as part of fulfilling requirements of the Neuse River Nutrient Sensitive~~
7 ~~Waters Management Strategy shall be paid to the North Carolina Wetland Restoration Fund. Monies paid~~
8 ~~to this fund pursuant to this Rule shall be targeted toward restoration of wetlands and riparian areas within~~
9 ~~the Neuse River Basin.~~

10 ~~(b) A cost effectiveness rate shall be established by the Division that represents the cost to achieve a~~
11 ~~reduction of one kilogram (1 kg) or one pound (1 lb) of total nitrogen per year through the use of nitrogen~~
12 ~~reduction measures. The rate shall be periodically updated by the Division based on the availability of new~~
13 ~~cost or effectiveness data. The rate shall be twenty three dollars per kilogram per year (\$23/kg/year) or~~
14 ~~eleven dollars per pound per year (\$11/lb/year).~~

15 ~~(c) The offset payment shall be an amount sufficient to fund 30 years of nitrogen reduction. For loading~~
16 ~~offset in the wastewater discharge found in 15A NCAC 2B .0234, payment shall be made prior to permit~~
17 ~~issuance. For loading offset in the stormwater rule found in 15A NCAC 2B .0235, payment shall be made~~
18 ~~prior to approval of the development plan.~~

19 ~~(d) The nitrogen reduction credit associated with restored wetlands and riparian areas funded under this~~
20 ~~Rule shall be awarded exclusively to the person, municipality, discharger or group of dischargers who paid~~
21 ~~the offset fee.~~

22 (a) The purpose of this Rule is to establish procedures for the optional payment of fees to partially offset
23 nutrient loading requirements. This Rule may apply to any area of the State as directed by the
24 Environmental Management Commission (EMC).

25 (b) Specifically, this Rule authorizes the partial offsetting of the nitrogen loading requirements specified in
26 15A NCAC 2B .0234 and 2B .0235 for the Neuse River Basin and the partial offsetting of the nitrogen and
27 phosphorous loading requirements specified in 15A NCAC 2B .0258 for the Tar-Pamlico River Basin by
28 payment into the Riparian Buffer Restoration Fund administered by the North Carolina Ecosystem
29 Enhancement Program (EEP) according to the equations presented in this rule.

30 (c) Payments to offset nitrogen loading in both the Neuse and Tar-Pamlico River Basins shall be calculated
31 by using the following equation:
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33
$$\text{N Payment} = [(\$/\text{lb})(\# \text{ of lbs/year})(30 \text{ years}) + (\text{Land Cost } \$/\text{Ac})(1 \text{ Ac} / 35 \text{ Ac})(\text{Devel. in Ac})]$$

34
$$\text{X (1.1 Ad Costs)}$$

35

36 Where,
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1 \$/lb = The cost of mitigation in dollars per pound of nitrogen mitigation. For
2 stormwater offsets required under 15A NCAC 2B .0235 and 2B .0258, this
3 factor will be initially established at \$57/lb for calendar years 2005 and 2006
4 and thereafter adjusted on an annual basis (in January of every year) based upon
5 the construction cost index factor published every December in the *Engineering*
6 *News Record (ENR)*. For group compliance association wastewater discharge
7 offsets required under 15A NCAC 2B .0234(9), this factor will be initially
8 established at \$57/lb for calendar years 2005 and 2006 and thereafter adjusted
9 on an annual basis (in January of every year) based upon the construction cost
10 index factor published every December in the *Engineering News Record (ENR)*.
11 For new and expanding wastewater discharge offsets required under 15A NCAC
12 2B .0234(7) and (8), this factor will be initially established at \$28.50/lb for
13 calendar years 2005 and 2006 and thereafter adjusted on an annual basis (in
14 January of every year) based upon the construction cost index factor published
15 every December in the *Engineering News Record (ENR)*. The annual updating
16 of these costs will be performed by the In-Lieu Fee Program Coordinator in the
17 Ecosystem Enhancement Program.

18
19 # of lbs/year = The number of pounds of nitrogen exported or discharged each year for which
20 mitigation is being requested.

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22 Land Cost \$/Ac = The current property value, in dollars per acre, of the property being
23 developed, based upon the most recent county tax assessment.

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25 1 Ac / 35 Ac = An adjustment factor, indicating that one acre of mitigation is required
26 for every 35 acres of development.

27
28 Devel in Ac = The overall size of the development, for which the mitigation is
29 requested, in acres.

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31 (1.1 Ad Costs) = An adjustment factor, necessary to cover the administrative costs
32 associated with the requested mitigation.

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34
35 (d) Payments to offset phosphorous loading in the Tar-Pamlico River Basin shall be calculated by using the
36 following equation:

$$P \text{ Payment} = [(\$ / 0.1 \text{ lb}) (\# \text{ of } 0.1 \text{ lbs/year}) (30 \text{ yrs}) + (\text{Land Cost } \$ / \text{Ac}) (1 \text{ Ac} / 35 \text{ Ac}) (\text{Devel in Ac})] \\ \times (1.1 \text{ Ad Costs})$$

Where,

$\$ / 0.1 \text{ lb} =$ The cost of mitigation in dollars per tenth of a pound of phosphorous mitigation. This factor will be initially established at \$45/0.1 lb for calendar years 2005 and 2006 and thereafter adjusted on an annual basis (in January of every year) based upon the construction cost index factor published every December in the *Engineering News Record (ENR)*. The annual updating of this cost will be performed by the In-Lieu Fee Program Coordinator in the Ecosystem Enhancement Program.

$\# \text{ of } 0.1 \text{ lbs/year} =$ The number of tenths of a pound of phosphorous exported or discharged each year for which mitigation is being requested.

$\text{Land Cost } \$ / \text{Ac} =$ The current property value, in dollars per acre, of the property being developed, based upon the most recent county tax assessment.

$1 \text{ Ac} / 35 \text{ Ac} =$ An adjustment factor, indicating that one acre of mitigation is required for every 35 acres of development.

$\text{Devel in Ac} =$ The overall size of the development, for which the mitigation is requested, in acres.

$(1.1 \text{ Ad Costs}) =$ An adjustment factor, necessary to cover the administrative costs associated with the requested mitigation.

(e) In those cases where offset reductions are required for both nitrogen and phosphorous, the appropriate calculations shall be performed for both the nitrogen and phosphorous offset payments, as detailed in Paragraphs (c) and (d) of this Rule. In these cases, only the greater value of the two payments shall be required to satisfy the offset reductions for both the nitrogen and phosphorous limits.

(f) For loading offset in the Neuse River Basin in wastewater discharge found in 15A NCAC 2B .0234, payment shall be made prior to permit issuance. For loading offset in the Neuse River Basin in stormwater

discharge as specified in 15A NCAC 2B .0235, payment shall be made prior to approval of the development plan.

(g) For loading offset in the Tar-Pamlico River Basin in stormwater discharge as specified in 15A NCAC 2B .0258, payment shall be made prior to approval of the development plan.

(h) The nitrogen and phosphorous reduction credits associated with restored wetlands and riparian areas funded under this Rule shall be awarded exclusively to person, municipality, discharger, or group of dischargers who paid the offset fee.

History Note: Authority G.S. 143-214.1;

Eff. August 1, ~~1998~~. 1998;

Amended Eff. January 1, 2006.